



General Assembly

January Session, 2019

Raised Bill No. 7263

LCO No. 3527



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

AN ACT PROHIBITING INSURANCE COMPANIES FROM USING SEX OR GENDER IDENTITY OR EXPRESSION AS A FACTOR IN UNDERWRITING OR RATING PRIVATE PASSENGER NONFLEET AUTOMOBILE INSURANCE POLICIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 38a-686 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2019*):

4 (b) In determining whether rates comply with the excessiveness
5 standard in a noncompetitive market under subdivision (1) of
6 subsection (a) of this section, the inadequacy standard under
7 subdivision (2) of subsection (a) of this section and the requirement
8 that rates not be unfairly discriminatory, the following criteria shall
9 apply:

10 (1) [Consideration] Except as provided under subparagraph (B) of
11 subdivision (4) of this subsection, consideration may be given, to the
12 extent possible, to past and prospective loss experience within and
13 outside this state, to conflagration and catastrophe hazards, to a

14 reasonable margin for underwriting profit and contingencies, to past
15 and prospective expenses both country-wide and those specially
16 applicable to this state, to investment income earned or realized by
17 insurers both from their unearned premium and loss reserve funds,
18 and to all other factors, including judgment factors, deemed relevant
19 within and outside this state and in the case of fire insurance rates,
20 consideration may be given to the experience of the fire insurance
21 business during the most recent five-year period for which such
22 experience is available. Consideration may be given in the making and
23 use of rates to dividends, savings or unabsorbed premium deposits
24 allowed or returned by insurers to their policyholders, members or
25 subscribers.

26 (2) (A) The systems of expense provisions included in the rates for
27 use by an insurer or group of insurers may differ from those of other
28 insurers or groups of insurers to reflect the operating methods of any
29 such insurer or group with respect to any kind of insurance, or with
30 respect to any subdivision or combination thereof.

31 (B) (i) With respect to private passenger nonfleet automobile
32 insurance, an insurer shall not allocate as flat dollar amounts to base
33 rates: (I) Producer commissions; (II) premium taxes; (III) underwriting
34 profits; or (IV) contingencies.

35 (ii) With respect to private passenger nonfleet automobile insurance,
36 an insurer shall allocate as flat dollar amounts to base rates: (I) At least
37 ninety per cent of general expenses, including administration and
38 overhead costs; (II) at least ninety per cent of other acquisition costs for
39 marketing and agent field offices, which may be allocated over the
40 expected life of such insurer's policies; and (III) miscellaneous taxes,
41 licenses and fees.

42 (iii) Each insurer shall allocate such flat dollar amounts set forth in
43 subparagraph (B)(ii) of this subdivision after any classification factors
44 set forth in subdivisions (3) to (5), inclusive, of this subsection have
45 been applied to base rates.

46 (3) Risks may be grouped by classifications for the establishment of
47 rates and minimum premiums, provided with respect to private
48 passenger nonfleet automobile insurance, any change in territorial
49 classifications shall be subject to prior approval by the Insurance
50 Commissioner, and provided no surcharge on any motor vehicle
51 liability or physical damage insurance premium shall be assigned for
52 (A) any accident involving only property damage of one thousand
53 dollars or less, (B) the first accident involving only property damage of
54 more than one thousand dollars which would otherwise result in a
55 surcharge to the policy of the insured, within the experience period set
56 forth in the insurer's safe driver classification plan, (C) any violation of
57 section 14-219 unless such violation results in the suspension or
58 revocation of the operator's license under section 14-111b, (D) less than
59 three violations of section 14-218a within any one-year period, (E) any
60 accident caused by an operator other than the named insured, a
61 relative residing in the named insured's household, or a person who
62 customarily operates the insured vehicle, (F) the first or second
63 accident within the current experience period in relation to which the
64 insured was not convicted of a moving traffic violation and was not at
65 fault, or (G) any motor vehicle infraction. Subparagraph (G) of this
66 subdivision shall not be applicable to any plan established pursuant to
67 section 38a-329. Classification rates may be modified to produce rates
68 for individual risks in accordance with rating plans that provide for
69 recognition of variations in hazards or expense provisions or both.
70 Such rating plans may include application of the judgment of the
71 insurer and may measure any differences among risks that can be
72 demonstrated to have a probable effect upon losses or expenses.

73 (4) (A) Each rating plan for private passenger nonfleet automobile
74 insurance that includes territorial classifications shall assign a weight
75 of seventy-five per cent to individual territorial loss cost indication and
76 twenty-five per cent to the state-wide average loss cost indication.

77 (B) With respect to private passenger nonfleet automobile insurance,
78 an insurer shall not use an applicant's or insured's sex or gender
79 identity or expression as a factor in underwriting or rating.

80 (5) Each rating plan shall establish appropriate eligibility criteria for
81 determining significant risks that are to qualify under the plan. Rating
82 plans that comply with the provisions of this subdivision shall be
83 deemed to produce rates that are not unfairly discriminatory.

84 (6) With respect to personal risk insurance, an insurer shall not use
85 an applicant's or insured's credit history as a factor in underwriting or
86 rating except in accordance with this subdivision. For the purposes of
87 this section, "credit history" means any credit-related information
88 derived from or found in a credit report or credit scoring program or
89 provided in an application for personal risk insurance, and "financial
90 history measurement program" means a program that uses an
91 applicant's credit history to measure such applicant's risk of loss.

92 (A) An insurer shall file with the commissioner any financial history
93 measurement program it uses to underwrite or rate risks for personal
94 risk insurance. Such filing shall (i) include a description of the
95 program, (ii) identify the characteristics used in such program from
96 which a measurement is derived, (iii) include the rules and procedures
97 of such program, and (iv) include an explanation of the impact of
98 credit information and items of public record on insurance rates over
99 time. Such program shall not unfairly discriminate among applicants
100 or produce rates that are excessive for the risk assumed. Any filing
101 made pursuant to this subparagraph shall be considered a trade secret
102 for the purposes of section 1-210.

103 (B) (i) An insurer that uses a financial history measurement program
104 shall submit to the commissioner documentation that demonstrates the
105 correlation between such program and the expected risk of loss, and
106 how such program impacts consumers (I) in urban territories, versus
107 consumers in nonurban territories, and (II) based on consumers' ages.
108 The commissioner may request the insurer to provide a financial
109 history measurement for a set of test examples that reflect various
110 characteristics.

111 (ii) An insurer that uses a financial history measurement program

112 shall disclose to each applicant for personal risk insurance, in writing,
113 by telephone, by electronic mail or orally, at the time of application
114 that the applicant's credit history may be used in the underwriting or
115 rating of such applicant's policy, and that the applicant has the right to
116 request, in writing, that the insurer consider, during its underwriting
117 or rating process or during a review requested by such applicant of a
118 rate quote, an extraordinary life circumstance, as set forth in
119 subparagraph (D) of this subdivision, if such applicant's credit history
120 has been adversely impacted by such extraordinary life circumstance
121 and such extraordinary life circumstance occurred within three years
122 before the date of the application. In addition, such insurer shall
123 provide to each purchaser of such policy, not later than the date of
124 issuance of such policy, a written disclosure that includes: (I) The
125 name, address, telephone number and toll-free telephone number, if
126 applicable, of the insurer; (II) detailed information about how the
127 insurer uses credit information to underwrite or rate such policies; and
128 (III) a summary of consumer protections regarding the use of credit, in
129 a form determined by the commissioner. Such written disclosure shall
130 be printed in reasonably conspicuous type and be provided by the
131 insurer electronically, by mail or by hand delivery.

132 (C) (i) An insurer may use a financial history measurement program
133 to underwrite or rate risks only (I) for new personal risk insurance
134 policies, or (II) upon renewal, either at the request of an insured or if
135 such use reduces the premium for the insured in accordance with the
136 insurer's filed rates and rules.

137 (ii) An insurer shall not use the following characteristics in a
138 financial history measurement program: (I) The number of credit
139 inquiries in an applicant's or insured's credit report or credit history;
140 (II) the applicant's or insured's use of a particular type of credit card,
141 debit card or charge card; (III) the applicant's or insured's total
142 available line of credit; (IV) any disputed credit information while such
143 dispute is under review by a credit reporting company, provided such
144 information is identified in an applicant's or insured's credit report or
145 credit history as being in dispute; (V) collection accounts identified

146 with a medical industry code in the applicant's or insured's credit
147 report or credit history; and (VI) the applicant's or insured's lack of
148 credit history, unless the insurer treats the applicant or insured as if
149 such applicant or insured had neutral credit information, as defined by
150 the insurer.

151 (iii) A financial history measurement program shall give the same
152 weight to an applicant's or insured's purchase or financing of a specific
153 item regardless of the type of item purchased or financed.

154 (D) (i) Upon written request by an applicant, an insurer shall
155 consider, during its underwriting or rating process or during a review
156 requested by such applicant of a rate quote, an extraordinary life
157 circumstance of such applicant if such extraordinary life circumstance
158 occurred within three years before the date of application. If such
159 insurer determines that such applicant's credit history has been
160 adversely impacted by such extraordinary life circumstance, such
161 insurer shall grant a reasonable exception to such insurer's rates, rating
162 classifications or underwriting rules for such applicant. As used in this
163 subparagraph, "extraordinary life circumstance" means (I) a
164 catastrophic illness or injury, (II) divorce, (III) the death of a spouse,
165 child or parent, (IV) the involuntary loss of employment for more than
166 three consecutive months, (V) identity theft, (VI) total or other loss that
167 makes a home uninhabitable, (VII) other circumstances as may be
168 adopted in regulations by the commissioner, in accordance with
169 chapter 54, or (VIII) any other circumstance an insurer may choose to
170 recognize.

171 (ii) An insurer may require the applicant to provide reasonable,
172 independently verifiable written documentation of the extraordinary
173 life circumstance and the effect of such extraordinary life circumstance
174 on such applicant's credit report or credit history. Any such
175 documentation shall be kept confidential by the insurer.

176 (iii) If the insurer grants an exception pursuant to subparagraph
177 (D)(i) of this subdivision, the insurer shall (I) consider only credit

178 information that is not affected by the extraordinary life circumstance,
179 or (II) treat the applicant as if such applicant had neutral or better than
180 neutral credit information, as defined by the insurer.

181 (iv) An insurer shall not be deemed to be out of compliance with
182 any provision of the general statutes or regulations adopted
183 thereunder concerning underwriting, rating or rate filing solely on the
184 basis of the granting of an exception pursuant to this subparagraph.

185 (E) (i) If an insurer takes an adverse action that is due at least in part
186 to the information contained in an applicant's or insured's credit
187 report, such insurer shall disclose to such applicant or insured: (I) That
188 such adverse action was based on the credit report of such insured or
189 applicant; (II) that such applicant or insured is entitled to a free copy of
190 such credit report and where such report can be obtained; (III) the
191 types of extraordinary life circumstances set forth in subparagraph (D)
192 of this subdivision; and (IV) the procedures for an applicant to inform
193 the insurer of an extraordinary life circumstance and to submit any
194 required documentation pursuant to subparagraph (D) of this
195 subdivision.

196 (ii) For the purposes of this subdivision, an "adverse action" means
197 (I) the denial of coverage to an applicant or insured or the offering of
198 restricted coverage, (II) the offering of a higher rate, (III) the
199 assignment of an applicant or insured to a higher rate tier or to a
200 higher-priced company within an insurer group, or (IV) any other
201 action that adversely impacts an applicant or insured due to the
202 financial history measurement program.

203 (F) After an insurer's financial history measurement program has
204 been in effect for two years, the commissioner may require such
205 insurer to submit a report to the commissioner on the use of such
206 program in the state. Such report shall include information that
207 demonstrates that such program results in rates that are supported by
208 the data and that are not unfairly discriminatory, and an analysis of
209 consumer complaints submitted in writing or by electronic mail to the

210 insurer resulting from such insurer's use of a financial history
211 measurement program, such that is sufficient to identify the basis for
212 the complaints and any subsequent insurer action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	38a-686(b)

Statement of Purpose:

To prohibit insurance companies from using sex or gender identity or expression as a factor in underwriting or rating private passenger nonfleet automobile insurance policies.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]